IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Bail Appl..No. 5174 of 2007()

CRIME NO.256 OF 2007 OF ANCHAL POLICE STATION

: PETITIONER/2ND ACCUSED

SREEKUMAR P.V., AGED 28 YEARS,
S/O BABURAJAN, THUZHATHALOL VEEDU,
PANAYANCHERY, ANCHAL P.O., KOLLAM DISTRICT.

BY ADV. SRI.SAJIV.C.K.

RESPONDENTS: STATE & COMPLAINANT

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1. STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. SUB INSPECTOR OF POLICE,
ANCHAL POLICE STATION, KOLLAM DISTRICT.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 24/08/2007 ALONG WITH B.A.NO.5357/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

B.A.Nos.5174 & 5357 of 2007

Dated this the 24th day of August, 2007

ORDER

These applications are filed by the accused in a crime registered, inter alia, under Section 326 r/w 149 I.P.C. Accused 1, 3, 4 & 6 claim regular bail in B.A.No.5357 of 2007, whereas accused 2 claims anticipatory bail in B.A.No.5174 of 2007. The crux of the allegations is that on account of personal animosity which accused 1 and 2 had against the victims, the accused persons 9 in all - 8 named and one is not identified so far, were members of an unlawful assembly of persons who in prosecution of their common object attacked the victims causing grievous injury to them. The alleged incident took place on 31.07.07. F.I.R was lodged on 01.08.07. Accused 1 to 3 are named in the F.I.R. Investigation is in progress. Accused 1, 3, 4 & 6 were arrested on 08.08.07. They continue in custody from that date. Accused 2 apprehends imminent arrest.

2. The learned counsel for the accused 1, 3, 4 & 6 submits that the petitioners are absolutely innocent. They may now be enlarged on bail, it is prayed. The learned Public Prosecutor does not oppose the said prayer. The learned Public Prosecutor only submits that appropriate and strict conditions may be imposed. Hence

B.A.No.5357 of 2007, I am satisfied, can be allowed subject to conditions.

3. The learned Public Prosecutor opposes the anticipatory bail application of the 2nd accused. The learned counsel for the petitioner submits that the 2nd accused/the petitioner in B.A.No.5174/07 is absolutely innocent. He is a sick person. He is afflicted with cancer. He is undergoing treatment. He is admittedly employed as an employee of the 1st accused. He is not able to do any strenuous work. Considering the state of health of the 2nd accused, he may be granted anticipatory bail, submits the learned counsel for the petitioner/2nd accused.

4. The learned Public Prosecutor opposes that application. The learned Public Prosecutor submits that there are no circumstances whatsoever which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. The petitioner is alleged to have indulged in a specific over act - beating the victim with an iron rod. Such an allegation appears clearly in the F.I statement. All the theories urged about the ill health of the 2nd accused and his consequent eligibility for anticipatory bail cannot be accepted at the moment, submits the learned Public Prosecutor .

5. The F.I.R has been read over to me. I have considered all the relevant inputs. I am satisfied that there are no features in this case which would justify the invocation of the extraordinary equitable discretion under Section 438 Cr.P.C. Powers under Section 438 Cr.P.C are to be invoked sparingly and in exceptional cases in aid of justice. Such discretion cannot be invoked as a matter of course. Even the fact that the regular bail may have been granted to an accused person if he surrenders and applies for such bail, cannot ip so fact persuade this Court to invoke the extraordinary equitable discretion under Section 438 Cr.P.C.

6. In the result:

a) Bail application No.5174 of 2007 is dismissed. Needless to say that if the petitioner if the petitioner/2nd accused appears before the learned Magistrate and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously .

b) Bail application No.5357 of 2007 is allowed. The petitioners/accused 1, 3, 4 & 6 shall be released on bail on the following terms and conditions.

i) The petitioners shall execute a bond for Rs.5,000/- (Rupees Fifty thousand only) each with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioners shall make themselves available for interrogation before the Investigating Officer between 10 a.m and 12 noon on all Mondays and Fridays for a period of two months and thereafter as and when directed by the Investigating Officer in writing to do so.

(R.BASANT, JUDGE)

rtr/-